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Outline of DCI Speech to Pennsylvania Law Review Dinner

Communism and "Constitutionalism"

as such refs -

"Parliamentary Means to Power"

I. Introduction.

Appropriateness of subject to audience of sophisticated lawyers.

II. The New Soviet Appeal to "Constitutionalism" and Democratic Forms

20th Party Congress -- enunciation of doctrine that it is possible to achieve "socialism" by "parliamentary means." Khrushchev speech. (A)

Related re-write of history. Mikoyan reference to Czechoslovakia and other Satellite cases. *also related tendency to interchange "socialism" + "communism."*

New freedom of criticism. *(Yet no ref to 1936 Constitution.)*

Denunciation of confession method of conducting trials, and of Vyshinsky. Concept of "Socialist Legality". *promised early publication increased emphasis on constitutional forms in some satellites with Appeal to underdeveloped areas that they can make progress without going whole hog to Communism -- as previously insisted. Examples. such traditions, e.g. Poland's SETM.*

III. Soviet Objectives Unchanged

Goal is still revolution. Mikoyan same speech. (C)

Some Western comment implies parliamentary means are to replace other tactics. This is not true on face of Soviet statements; rather Soviets are setting up an additional road to power. Same Mikoyan speech. (D)

Limits to freedom of criticism already indicated. *little doubt what a Commi regime, once in, would do to civil rights. (To hell with Ref to Soviet Democracy - Thuma's try.)*

IV. Basic Appeal of New Line

Despite its basic fraudulence, new line clearly does appeal. Old story of bad boy doing one good deed and getting tremendous credit. Double standard problem, particularly in eyes of underdeveloped areas.

Moreover, the appeal to "constitutionalism" at this time has the additional advantage that it can be conducted on all three fronts of Soviet policy, within USSR, in Satellites, and toward non-Communist countries both in Europe and Asia. (Unlike 1936-39, when appeal to popular front externally had to contend with the jarring note of the clear abandonment of any pretence of democratic internal policy, in the purges.) Now Soviets can pretend plausibly to play same

Lenin attack on parliamentary means.

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V. Previous Periods when Soviets Have Appealed to Constitutional Principles

1936 Constitution -- largely drowned out by purges.

1945-48 more closely parallel. Present Mikoyan reference to *Czechoslovakia* clearly evokes this period, which was significant for:

Appeal to idea of People's Democracy, as something different from dictatorship of the proletariat.

Attempt to conceal Satellite take-overs under facade of democracy -- no elections, but use of front governments and non-Communist elements

Popular front tactics in France and Italy -- participation in governments, Commie influence in weighting French Constitution to give great power to Assembly versus Executive.

Results in 1945-48 were success in Czechoslovakia (not by election but manipulation) and Satellites, but failure in France and Italy.

End of period in 1948, signalled especially by Dimitrov speech.

VI. 1948-51: Control of Satellites much more blunt with repeated purges, little appeal to constitutional facade in USSR or Satellites, fluctuation in policy in non-Communist countries but overall thrust in direction of violence (French strikes to Ridgway riots).

VII. 1951-56 Present line not abruptly adopted ^{but} foreshadowed by various small signs from 1951 on, especially after death of Stalin.

VIII. The Threat of the Present Policy

Pretense of legality in administration of justice primarily for

propaganda appeal and to support idea of Communist respectability.

Good for internal ^{love} morals also.

Real threat of Commie take-over, way having thus been prepared, is through:

1. Use of offices within executive of popular front governments.

2. Use of elections to bring about popular fronts, or at least get effective voice
How serious is this threat?

IX. The Communist Record in Elections

Never a Communist majority by election yet.

^{obtaining + manipulation of office}
Hence problem is manipulation of minority status.

^{Obtaining to Commies}
Advantages of proportional representation systems. Davis

case, last French election showing breakdown of system designed to limit Commie influence.

Yet majority systems may not be effective if Commie strength in 30-40% range. Greek illustration.

Brazil

Commies clearly will seek system to their advantage, claiming proportional rights if small, denying them to others if large.

Problem is not basically one of systems. If too crudely designed

against Commies, danger of backfire. Italian case. ¹⁹⁵⁵ ^{Best case}

^{Manipulation}
X The Threat under present circumstances: (2 "Parliamentary Means")

Greece & Ireland

France and Italy. In France Commie possession of balance of

power exerts pressure on French policy -- used quite

unscrupulously as in supporting Algerian policy with

with which they disagreed. But danger of Commie entering government not acute. In general, European countries well aware both of Commie tactics in elections, and of Commie use of key offices within executive.

*Relatedly
American Europe
Democracies
Success
Scland*
Underdeveloped countries. Far more serious, especially in

Indonesia, where Commies showed grass roots organization of great ability, and where they nearly got key ministerial posts even in new government. (Point that classic "key" points are Internal Security and Defense, but this may not always be so. In last Indonesian go-round, big Commie pressure was to get Labor portfolio. Always unlikely that Commie takeover methods will repeat themselves exactly. Lenin dictum.)

Summary -- new line clearly a serious threat, especially in countries inexperienced in democratic techniques.

XI. Long-Run Implications of Commie Appeal to "Constitutionalism"

The present Commie appeal to "constitutionalism" is clearly a

tactical move reflecting their view that it will be profitable to do so, at a time when fear of war is reduced, and reflecting also the blocking by the West of the pressure line they had been pursuing. *Will turn to other means wherever conditions.*

Yet there is food for reflection in the fact that the Commies

are drawn back so strongly to appeal to values they basically deny. As they do so, in the USSR and the Satellites, they

*Tib ref to
Diplomacy
Polish example
at present
Past experience in UK over*
take up desires they really do not mean to satisfy; this may result in present strength, but it also has the seed of future problems. (Czarist experience with calling Dumas and then dissolving them.) *However, despite strong and brief*

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ANNEX A

"The right wing bourgeois parties and their governments are suffering bankruptcy with increasing frequency. In these circumstances, the working class, by rallying around itself the toiling peasantry, the intelligentsia, all patriotic forces, and resolutely repulsing the opportunist elements who are incapable of giving up the policy of compromise with capitalists and landlords, is in a position to defeat the reactionary forces opposed to the popular interest, to capture a stable majority in parliament, and transform the latter from an instrument of bourgeois democracy into a genuine instrument of the peoples' will. In such an event this institution, traditional in many highly developed capitalist countries, may become an organ of genuine democracy - democracy for the working people." (Khrushchev speech, 14 February 1956).

ANNEX B

"The revolution in Czechoslovakia took another course. By force of the favorable postwar situation in Czechoslovakia the socialist revolution was carried out by peaceful means. Communists came into power after having allied themselves not only with the parties of the working people which were close to them but also with the bourgeois parties which supported the common national front. The Czechoslovak people won by way of a peaceful development of revolution. In their own way, yet also without civil war, the working class of Bulgaria, Rumania, Hungary, Poland, and other People's Democracies arrived at the victory of the socialist revolution." (Mikoyan speech, 18 February 1956).

Polish Sejm (parliament) has long history (from 14th century) and is now receiving marked new attention in Poland -- used to be merely a pro forma rubber stamp meeting one week every year. Now beefed up as sop to Polish national sentiment - but the opiate may well prove habit forming judging from recent events.

Radio Warsaw 16 April: a conference of senior figures in Sejm meeting to discuss "the new role of the Sejm in our life and in our system and to the new system of work of the Sejm". At this meeting agreed "the constitution has created sufficient legal conditions for the Sejm really to fulfill the role of the highest organ of the state. Implementation of the provisions of the constitution was poor, however" (i.e. criticized for not following constitution)

In working out improvements in recently held long session Sejm assumed a whole new range of functions:

1. Ministers called on for reports to and interrogation by committees of Sejm.
2. Serious discussion of draft budget in course of which ratio of appropriations to provincial interests increased over original draft.
3. Passing of the amnesty bill for 30,000 political prisoners in Sejm.
4. Announcements of transfer many eco planning functions from planning commission to ministries, which means according Polish press "broad control" of Sejm over capital investment.
5. More frequent meetings of Sejm called for.

ANNEX D

"It is necessary for the state and leadership of society to pass over to the working class (which).... will take power into its own hands and liquidate private ownership as the basic means of production. Historical materialism teaches that the replacement of capitalism by a classless society constitutes a revolutionary jump. This transfer, in its essence, is a revolutionary change of one social order into another. Therefore any transfer from capitalism to socialism, a change in social relations is a revolution, varying in acuteness, but nevertheless revolution which all peoples will experience." (Mikoyan speech, 16 February 1956.)

ANNEX E

"Thus the course of history proved without any doubt the justice of the teachers of communism who foresaw in addition to the path of armed revolt also a peaceful path for the developemnt of the revolution." (Mikoyan speech, 18 February 1956).

A case in point is the New York City Council before World War II. The Council, comprising 25 members, was originally elected with a large predominance of Democratic Councilors. The so-called Fusion group introduced proportional representation. The Democrats continued to maintain their majority; the Republicans achieved approximately their proportionate share of the Council. In 1939 the American Labor Party gained five seats, and in 1940 and 1941 two Communists were elected under an open Communist ticket. Both the Communists were elected in constituencies of predominant foreign population. They would not have been elected under a majority system.

6.

The classic form of manipulation is that of the premium vote. In a multi-party system it is invariably associated with the principle of electoral alliances ("apparentements" in France, "collegamenti" or "apparentamenti" in Italy). Under this system, linked tickets of several parties are presented in a large number of constituencies or electoral districts. Under the French Electoral law of 1951, any such linkage which gathered an absolute majority in a given constituency, was granted all the seats for that district. If no party or linked group polled a majority the seats of the district were assigned on a basis of proportional representation. This system was introduced in 1951 for the express purpose of weakening not only the Communists on the left, but the Gaullists on the right. It succeeded admirably. The Communists did get 98 seats, the Gaullists 101, but under pure proportional representation the figures would have been Communists 172, Gaullists 143, an actual majority of the 627 seat assembly. The elections of 1956 were fought under the same system, despite efforts by Mendes-France and others to introduce the single candidate constituency system. This time, as we all know, the Left and Right Center were torn by the bitter feud of Mendes-France and Edgar Faure. The Communists proposed electoral alliances with the Socialists, but this was turned down by the Socialist Party organization, although nearly a third of the Party delegates were in favor of such alliances. On the extreme right, the Poujadistes emerged as the new threat

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replacing the fragmented Gaullists. When the votes were counted, Right or Left Center alliances had gained absolute majorities in only 10 districts. The net result: proportional representation was applied almost generally and the Communists got 25.6% of the popular vote and 24.1% of the seats. Thus, while we cannot say that the Communists were able to exploit the electoral system for any major advantage, we can say that the premium vote device failed to protect the broad spectrum of democratic parties from the menace of powerful anti-parliamentary parties at either extreme. The future of the French parliamentary system is overcast with a somber shadow. If dissension continues within the Center, another election under the present system might (as it would have in 1951 under pure PR) yield a parliament with the anti-parliamentary extremes actually in a majority.

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A slightly less flagrant example of premium voting was adopted in the Greek elections of February 1956. The law was clearly intended to favor the party of Premier Karamanlis. It also sought to discourage minor parties by a requirement that each party must win 15% of the national vote to be eligible for parliamentary representation. In the case of coalitions, 25% of the vote was required. It was thought that these percentages would discourage the opposition from flirting with the Communist controlled EDA party. The results: Karamanlis achieved 49% of the popular vote and 55% of the seats; the opposition with 46% of the vote got 45% of the seats. By their successful alliance with the opposition the Communists were able to win 18 seats, with perhaps another 26 responsive to their influence. Thus, while Karamanlis was able to achieve a slight betterment of his majority by electoral manipulation, the price was the rather substantial intrusion of the Communists into the parliamentary scene. There is every reason to believe that unless, as seems unlikely, the conservative elements in power take vigorous measure to alleviate poverty, Communism in Greece may come to exercise something like the attraction that it has in Italy.

The case of Italy is equally striking. The Scelba Electoral law of 1953 was passed by the dominant Christian Democratic Party and its lesser affiliates who commanded a prospective vote of about 50%. With a powerful combination of Communists and Nenni Socialists on the left likely to achieve some 35% and with a monarchist and irresponsible neo-Fascist on the right, the prospect for stable government was poor indeed. To cope with this, the new law incorporated a premium vote, which provided that any party or linked group winning more than 50% of the popular vote, got a bonus of 15% in the distribution of seats. In the election the Demo-Christian alliance fell only 57,000 votes of achieving an absolute majority, with the result that proportional representation applied in its pure form.

One lesson was learned by the dominant party. The law was in effect a "trick" law, or as the left promptly labeled it, a "swindle" law (legge truffa). Recognition of this fact undoubtedly outraged many center voters, who decided to register a protest against it, either to the right or to the left. If the Christian Democrats had been content to let well enough alone, and to take their chance with pure proportional representation, they and their affiliates might have emerged with a small popular majority, small, perhaps, but at least sufficient to govern.

That this lesson has been absorbed, is made clear by the new law which has been adopted for the upcoming administrative elections (May 1956). This is basically a PR law, with a major modification to be sure (modified majority system in Communes over 10,000, pure PR for those

under 10,000). It reflects the perhaps belated recognition by the Christian Democrats that it cannot hope to stave off Communist and leftist pressures by electoral manipulation.

THE CZECH EXAMPLE

Mikoyan's example of Czechoslovakia as an example of a peaceful parliamentary road to socialism is pretty ominous. Insofar as the Communists were submitting themselves to electoral and parliamentary methods they were in fact losing on the eve of the coup of February 1948. It was only their control of the police and certain paramilitary forces of their own, which enabled them to take over capitalizing on their own singleness of purpose and the all-important element of confusion and vacillation in the non-communist camp.

To begin with, the Communists had in Czechoslovakia, a number of people in the coalition government, thanks more to the well-intentioned but naive belief of Benes that they could all be good Czechs and a bridge between East and West - than to striking Communist electoral successes. Private survey by Communist Minister of Information in late 1947 showed that Communist prospects for general election scheduled in May 1948 were poor, and at the same time an important Communist sympathizer was ejected from the leading non-Communist party of the left. When the Communist minister of the interior was ordered by the legally constituted majority of the cabinet to remove recently infiltrated party members from the Prague police, the Communist minister refused to do so and was supported by the Communist prime minister, Gottwald.

There were two key aspects to the ability of the Communists to get away with this defiance of the cabinet:

- (1) the threat of Russian power which was dramatized by the arrival in Prague, during the crisis, of a deputy foreign minister on a "special mission";
- (2) the lack of unity of the non-Communist majority, in that one important party in the non-Communist majority (the Social Democrats) decided after some vacillation not to free the communists out by resigning from the government, thus giving the Communists enough strength to take over the existing government legally.

The social democrats based their decision not to resign on the false assumption that the Communists were prepared to play the parliamentary game even to defeat. But threats of violence and intimidation preceded the take-over, and violence followed it and consolidated it -- including repression of the very party - the social democrats - who were willing to play into Communist hands.

The essential element, however, in this form of Communist takeover was clearly the vacillation - the refusal to fight back, or even to recognize the need for fighting together - among the free majority. The key non-Communist leaders, President Benes, the Minister of Justice and the Minister of Foreign Affairs all died or were killed within a few months of the takeover. Each of them had failed at critical points

to oppose this gradual process of infiltration and intimidation by which an unpopular but resolute minority can come to power. Clearly important if the Communists seek new gains on the Czechoslovak pattern for them to make the pattern of conciliation practiced by Benes et all seem sensible and reasonable again. Thus, the euphoria of peaceful hands, friendly words, and call for united action with other parties of the left and "men of good will" remains - until the Soviet leaders clearly renounce the Leninist ethic of revolutionary expediency -- basically attempt to induce passivity and a sense of helplessness in the face of determined Communist efforts to gain power.

Best candidate among heads of state for a Benes would seem to be Sukarno of Indonesia, who has recently called for a coalition of "nationalist moslem and Marxist" elements in Indonesia, and may get it yet (see my memo on "Popular front prospects in Indo") . Danger also in Burma and India, possibly Laos and Cambodia, and of course areas like Singapore, if it receives freedom. Hope in France and Italy, if decay continues, possibly some hope over a period of time in Greece and Finland.